In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 386

FRANCISCA DE GUIA, BEATRIZ B. PALMERES, PAULINO LORENZO, AND RAYMUNDO F. NAVARRO, PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In these three suits—one filed on October 2 (R. 1), the others on October 12, 1951 (R. 5, 9)—just compensation is sought for alleged requisitions of petitioners' property in the Philippine Islands during World War II. Following its rulings in *Marcos* v. *United States,* 102 F. Supp. 547, rehearing denied, 106 F. Supp. 172, and *Tan* v. *United States,* 102 F. Supp. 552, petition for certiorari pending, No. 382 this term, the Court of Claims has held (1) that the 6-year statute of limitations (28 U. S. C. 2501) was suspended during

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the war, (2) that the period of suspension ended on September 2, 1945, when Japan surrendered, and (3) that the present claims, filed more than 6 years after September 2, 1945, are barred. Petitioners contend that the period of suspension should have been held to have continued until December 31, 1946, when the President formally proclaimed the termination of hostilities with Japan. Alternatively, they argue that the period of limitations tolled while their claims were being considered by the Army Claims Service.

These arguments are substantially the same as those presented by the petition for certiorari in *Tan* v. *United States,* No. 382. We believe that our brief opposing that petition, to which the Court is respectfully referred, establishes the correctness of the decision below and the absence of grounds for further review.

The discussion in the present petition of the First War Powers Act (Pet. 12–13) serves only to stress what is neither disputed nor helpful to petitioners—that the Army had power to settle their claims had it found them meritorious. The decisive point here, as in *Tan* (see pp. 6–10 of our brief in opposition, No. 382), is that the existence of this power did not postpone the accrual of petitioners' cause of action or extend the 6-year period within which their suits should have been brought.

Equally wide of the mark is the suggestion (Pet. 6–8) that the duration of petitioners' "enemy" status was a "political" question to be resolved by the executive and that the Court of Claims should, therefore, have chosen December 31, 1946, the date proclaimed by the President as the end of hostilities, rather than September 2, 1945, the date of Japan's surrender, as the end of the period during which the statute of limitations was suspended. As we have shown in the *Tan* case (Br. in Opp., pp. 11–12), petitioners were "enemies" only while Japanese forces occupied their homeland. If a "political" determination were necessary that this occupation had ended, it was made no later than July 5, 1945, when General MacArthur and President Osmena of the Philippines announced the complete liberation of the Islands. Any possible error in selecting the later date of September 2, 1945, is obviously not one of which petitioners can complain.

We respectfully submit, in short, that for the reasons stated more fully in our brief opposing certiorari in the *Tan* case, the present petition for a writ of certiorari should be denied.

ROBERT L. STERN,
Acting Solicitor General.

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REPLY TO MEMORANDUM IN OPPOSITION

The "Memorandum for the United States in Opposition" to petition for writ of certiorari in these cases relies upon the "Brief for the United States in Opposition" filed in the case of *Tan* v. *United States,* No. 382. We in turn respectfully refer to the reply filed in that suit for substantial answers to the points made by the United States.

Furthermore, we urge the following:

(1) The Court of Claims in its decision in *Marcos* v. *United States,* 102 F. Supp. 547, holds that September 2,

1945, was a *logical* date for terminating the wartime suspension of the Statute of Limitations. A number of other dates had been submitted which also had the virtue of some *logic* but the Court seemed to think the date which it picked was the most *logical*.

In its brief in the *Tan* case and its memorandum in opposition, the Government, while supporting the *Marcos* decision for purposes of these cases, mentions that it wants to reserve arguments on the logic of the other dates. It goes farther and asks the petitioners not to complain since, according to its position, they received a "break" in the date selected.

We respectfully contend that the weakness of picking *logical* dates is evident in the very arguments which have been presented. We have contended and urge now that the date of December 31, 1946, is the only date which may be relied upon for the end of the tolling of the Statute of Limitations since it has a *legal*, not a philosophical, significance, being the date when the President proclaimed the end of hostilities.

(2) In the memorandum in opposition the Government states that we argue that the period of limitations was tolled while the claims were being considered by the Army Claims Service. This is inaccurate.

What has been contended throughout is that the claims did not *accrue* until action upon them was taken by the Army Claims Service. In the *Tan* case, the actual taking of property occurred in November, 1941. In these three cases, the taking occurred some time after hostilities actually opened on December 7, 1941. The taking was under war emergency conditions. The amount and time of repayment was for later determination. The only time when an action could accrue was when the machinery was set up for repayment and functioned in the form of the Army Claims Service.

The provisions of the 6-year Statute of Limitations (28 U. S. C. 2501) are to the effec that a claim must be asserted in the Court of Claims within six years after such claim *accrues* (italics supplied). Nothing here refers to the taking of the promises implici in the act. What is plainly stated is that the claim must be asserted in the Court within a limited period after *accrual*. These points are persistently avoided by the Court of Claims and counsel for the Government.

(3) The significance of the decisions in these cases calling for a review by this Court is acknowledged by the Government in its brief in the *Tan* case, (footnote 7, p. 11). There the general applicability of the *Marcs* case is admitted, but the argument is made that since on review this Court may conceivably conclude that the period of limitations expired earlier than September 2, 1945, and that such a decision affects about 50 cases now nding in the Court of Claims, petitioners should not prevl in their contentions that this Court review the whole qution of the running of the Statute of Limitations during he war as affecting claims arising in the Philippines.

Such a review may also conceivabl esult in the extension of the suspension of the Statute Limitations beyond September 2, 1945, on grounds eit that (a) the President's Proclamation of December 1946, ending hostilities, stopped tolling, or that (b) tl actions did not accrue until the claims were adjudicated by e Army Claims Service. Counsel for the Government l know that what is affected is not 50 claims pending in Court of Claims but some 30,000 undisposed of claims pending in court, as well as legal propositions of gene importance.

The Government concedes that the Court would or should reach the issues in the *Ma* case, it would not oppose certiorari. We respectfull dd that the Govern-

ment should not oppose the granting of writs since the *Marcos, Dino, Tan,* and the instant cases have been incorrectly and incoherently decided by the Court of Claims, leaving open questions of law of general and urgent significance.

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